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1 Abstract

This document holds the collection of national good practices with regards to the PSI framework for institutional embedding and enforcement. Please note that this deliverable was written on the basis of national (or even regional) examples provided by the LAPSI 2.0 partners and that this list is in no way intended to be exhaustive.

2 Introduction

Policy makers, the public sector, civil society, businesses and the general public have all broadly accepted the value of public sector information (PSI) for economic growth, public participation and accountability. In many countries, there is a “right to information” and the re-use of PSI and open data are encouraged. When the new PSI directive will be transposed in the Member States of the European Union, citizens and businesses will have a right to re-use information held by public sector bodies.

However, having such a right is not suitable if one cannot enforce it. Therefore, it is essential that the right to re-use PSI is supported by an effective redress mechanism. The LAPSI 2.0 project team¹ has identified a number of criteria to which redress mechanisms should answer to provide the re-users with sufficient guarantees and to ensure that the economic potential of PSI can actually be realised. For each criterion, one or more “good examples” are described from the redress processes already existing in different EU Member States. These examples can serve as inspiration for other organisations or countries when implementing or adapting their redress mechanisms.

The list of examples is not by any means intended to be exhaustive. It is based on the current knowledge and research of the LAPSI 2.0 team members, and there may be many more and other “good practices” throughout the EU that deserve a place in the report. The LAPSI 2.0 team welcomes any feedback on these examples and will be happy to add additional good practices they are pointed to.

3 Criteria for an effective redress mechanism

In the discussion on possible “good practices” in relation to the enforcement of PSI legislation and its possible redress procedures, the LAPSI 2.0 team first identified different criteria that would lead to a particular redress mechanism to be considered a good practice. Next, the team elaborated on the different elements that were critical for each criterion to be fulfilled. In a third step, examples were sought for each criterion. For some criteria, there may be multiple examples. On the other hand, one example may also answer multiple criteria. When this is the case, the particular applicability of each criterion is highlighted.

The following five criteria were considered “essential” for an effective redress mechanism:

1. Focus on prevention and mediation
2. Assignment of a responsible administrative body

¹ See authors above.

3. Transparency of conflict procedure
4. Swiftmess of the procedure
5. Attention for the practical organisation of the procedure

In the next subsections, a description will be given for each criterion, as well as a national example. Please be aware that this documents contains both good practices as well as other practices which contain elements that could be improved. We always indicate whether the example is a 'good practice', or an 'other practice'.

3.1 Focus on prevention and mediation

The most important characteristic of a well-functioning redress procedure is that it only comes into play when absolutely necessary. In short, **the focus of any policy on the re-use of PSI or open data should be on prevention rather than redress**. By providing potential re-users with sufficient information on the data that are available, what they can and cannot do with it, and which fees should be paid for such use, conflicts requiring time-consuming redress procedures can be avoided. Therefore, open data policies should invest in transparency and provide easily accessible information to potential re-users. This includes a general transparency effort at the level of the policy makers, but also the provision of sufficient information on data portals or on the public sector information holders' websites. It can also include for instance an *ex ante* approved charging scheme, e.g. laid down into an Act or ministerial decree.

If a conflict between a (potential) re-user and a public sector information holder would arise, it can be considered "good practice" to propose a **mediation procedure** between both parties in order to find an agreement without entering into a legal procedure. A **competent body** that has **the know-how** to perform such a procedure and that has a reputation of treating all **conflicts fairly and impartially** should lead the mediation. If the parties would not come to an agreement, the mediating body should also be able to **issue a decision**. Of course, such a decision should be **open for appeal** under the official redress procedure, but it can offer a first solution to the conflict.

3.1.1 Good practice: Mediation Service in the UK

What is it?

In connection to disputes about PSI re-use (such as potentially restrictive or unfair licensing clauses), the Office of Public Sector Information (OPSI), part of The National Archives, provides PSBs and re-users with a **Mediation Service**, i.e. an informal process where the conflicting parties can come together and, with the help of OPSI mediators (who are all accredited by the Centre for Effective Dispute Resolution), reach a settlement. In other words, via the Mediation Service conflicting parties are facilitated to explore the issues in dispute and to find out some possible solutions to them.

What advantages does it guarantee?

Mediation provides a low cost and speedy alternative to formal complaints, because it is a charge-free process that roots in parties' joint consent to discuss the issues in dispute and define a solution for them. In addition, it does not feed any "retaliation risk", because of its informal "mood".

Even where a settlement is not achieved, the process of mediation itself helps parties to narrow and clarify the issues that are at the heart of a dispute. Furthermore, the discussions are without prejudice and the conflicting parties can continue with proceedings if mediation fails.

How does it work?

If the parties agree to mediation, the mediator meets each party separately in the first instance to explore the issues. Then, the mediator facilitates a meeting involving both parties to discuss the issues at stake and any possible solution.

There is no fixed agenda in mediations: both parties agree the scope and the issues to be covered. There are also no fixed results in mediation: both parties must agree on a solution.

What are the main features of this process?

- No charge.
- Mediators are independent in order to guarantee impartiality.
- The process is confidential.

How does the mediation service relate to other kinds of disputes' resolutions that OPSI?

Following unresolved mediation, if parties wish to bring a formal complaint this will be investigated by an independent team within The National Archives that has not been involved in the mediation.

3.1.2 Good practice: Conciliation procedure in Austria

The Austrian Federal Act on the Re-Use of Public Sector Information includes a provision that offers a conciliation process to applicants who intend to re-use public information. In case of legal disputes concerning the re-use of documents of public sector bodies it is up to the applicant if he starts that

conciliation process or not. The provision reads as follows:

Before lodging an appeal an applicant may turn to a conciliation body to seek an amicable settlement of a legal dispute concerning the re-use of documents held by public sector bodies.

The conciliation body shall be composed of three members. Each party shall appoint a member, and these two members shall elect the chairman. The chairman must be a person who is not involved in the matter at issue and must not have any relationship to either party that may cast doubt on his impartiality.

If the public sector body does not take part in the conciliation process within two weeks, an appeal to competent civil courts may be submitted immediately.

Up to now this provision has no practical relevance in PSI matters. There is only one known case where an applicant tried to start conciliation, but the PSB did not react in this case. According to the current Act on the Re-Use of Public Sector Information the Austrian Public Sector bodies are not obliged to deliver data to re-users, it lies within the PSB's discretion to do so or not. The current Act secures transparency, reasonable pricing and fairness when it comes to allowing re-use.

The importance of the conciliation process will grow after the transformation of the new PSI directive into national law in Austria. When the PSBs are obliged to supply data for re-use purposes the need of arbitration will be given.

3.1.3 Other practice: The Spanish litigation procedure

As a general rule, there is no specific legal duty to offer or publish information related to these mechanisms in order to prevent litigation. Nevertheless, Royal Decree 1495/2011 states that the bodies of the General Administration and the other agencies or entities in the national level shall inform in structured, usable ways, preferably in a section in their e-offices of the documents that can be re-used, the formats they are available in, and the terms of re-use, indicating the latest update and giving accurate additional information whenever available for their adequate automated processing and understanding, and facilitating the identification, search and retrieval of the documents available for re-use to the best of their ability by way of lists, databases or re-usable information indices.

In the same direction, the above-referred Royal Decree also establishes an obligation for the national Government in order to maintain a catalogue of re-usable public information in the General Administration and the other public agencies or entities, making it possible to access all the existing re-usable public information resources from a single place.

Regarding mediation, Act 5/2012 on this subject does not apply to public bodies since its scope is only

focused on civil and commercial matters. Despite of this limitation, the Act 30/1992 on common administrative procedure provides for alternative ways of dispute resolutions based on an agreement between public bodies and citizens, although it is compulsory a specific legal provision in the concrete matter where it is to be applied². No rules have been approved in the field of PSI re-use.

3.2 Assignment of a responsible administrative body

A good way to organise an efficient redress mechanism is by **assigning a specific administrative body that is competent to handle the complaints**. This body should be **impartial and should be able to decide independently on the complaints**. In order to maintain its independence, the administrative body should have a **sufficient and consistent budget**, to ensure that it can be staffed with people that have the necessary expertise and specialisation to decide on the – often very specific – matters relating to PSI. This does not mean that a new administrative body has to be set up for dealing with PSI issues, but rather that the means and expertise are assigned to address complaints on PSI re-use.

The redress body should be **able to take binding decisions** and have the **tools to enforce the execution of these decisions by the public sector information holders and to check whether the decision was executed appropriately**. Imposing an obligation on the PSI holders that they have to report on the measures taken to remedy the conflict could accomplish this for example.

Some complaints may touch upon matters that could fall under the competence of other authorities, such as the national Data Protection Authority or the Competition Authority. In other cases, the PSI redress body may be competent but need information or advice from these other authorities. As a good practice, **a procedure should be set up for determine competence and exchanging information between the authorities that could be involved in a complaint about PSI re-use**.

In federal countries or countries that have sub-national structures with their own competence on PSI matters, it is very important to maintain a **harmonised approach** to complaints from PSI re-users against public sector information holders. This would require at least a **coordination structure** with organised communication and exchange of experience between the different redress bodies involved.

²Spanish Act 30/1992 just provides a general possibility that cannot be used itself unless specifically authorized in a second sectorial Act. Agreements between public bodies and citizens to settle disputes may only take place when a second Act allows such agreement in a particular subject. For instance, related to PSI reuse, it would require to be included in the PSI reuse Act (nowadays it is not possible).

3.2.1 Adesignated administrative body

3.2.1.1 Good practice: *The Information Commissioner in Slovenia*

The Access to Public Information Act (APIA) was adopted in Slovenia in 2003 and it established a new and independent institution - the Commissioner for Access to Public Information, who was competent for dealing with violations of the right to access to public information.

In 2005, Slovenia implemented the Directive 2003/98/EC into the APIA. With implementing the Re-use Directive into the APIA, the Commissioner automatically became competent for deciding on appeals regarding the right to re-use of public sector information as well.

In 2005, the Information Commissioner Act (ICA) merged the Commissioner for Access to Public Information with the Data Protection Inspectorate, forming a new authority – the Information Commissioner, responsible for access and re-use of public information as well as for personal data protection.

The Information Commissioner is an autonomous and independent state body, competent for:

- Deciding on appeals against decisions by which a public sector body refused or dismissed the request for access or re-use of public sector information;
- Supervising, within appellate procedures, the implementation of the APIA and regulations adopted there under;
- Initiating misdemeanour procedures for violations of the APIA (only in the framework of an appellate procedure) for:
 - o Destroying information with the intention of making such information inaccessible to the public;
 - o Not transmitting, without justification, the requested public information within the prescribed time limit;
- Initiating misdemeanour procedures for violations of the ICA; namely for failing to:
 - o Transfer requested information to the Commissioner upon its request;
 - o Enforce the Commissioner's decision (when it becomes final and enforceable - in case the administrative dispute is not initiated).

3.2.1.2 Good practice: the UK administrative body for re-users' complaints

If re-users wish to complain about the way a PSB deals with a request to re-use, first they must go through the complaints process of that specific PSB. Then, if they are not satisfied with the consequent outcome, they may choose to refer the complaint to the Office of Public Sector Information (OPSI), part of The National Archives. OPSI will investigate the complaint and carry out an independent assessment, whose main rationale is to create a simplified and low cost alternative to often expensive and time-consuming legal action.

In details:

1. Once the complaint has been sent to OPSI, the latter acknowledges receipt of the complaint and send it to the PSB allegedly responsible for the violation;
2. Once the PSB's response to the statement of complaint has been received, OPSI will commence its investigation.

In some cases, OPSI may require further information and supporting evidence from one or both of the parties. Either party may be interviewed by OPSI.

OPSI will assess how long the investigation will take to complete and notify the complainant and the PSB. This assessment will take into account the complexity of the issues raised.

If OPSI is unable to complete the investigation within the estimated timescales, it will notify both parties of the revised timetable.

3. On concluding an investigation, OPSI will prepare a report for publication which will cover the following information:
 - a. The nature of the complaint
 - b. The issues put forward by each side
 - c. OPSI's findings on which part of the Regulations, if any, have not been complied with, together with its reasons
 - d. **OPSI's recommended course of action**

If OPSI finds that the PSB has complied with the PSI Regulations it may nevertheless identify some areas where improvement is possible and make suggestions accordingly.

4. The draft report will be sent to both parties to check for factual accuracy. OPSI will consider suggested revisions to the report, making any amendments that it considers necessary. **The final decision will rest with OPSI.**
5. The final version of the report will be issued to each of the parties and published on The National Archives website. Subject to commercial confidentiality, OPSI also reserves the right to publish the statement of complaint and the PSB's response to it.
6. The complainant and the PSB will be informed that they have the option of applying to the APPSI Review Board for a review³ of OPSI's recommendations.
7. OPSI will set deadlines for its recommendations to be implemented and will monitor compliance with them.
8. After the deadlines have expired, OPSI will publish a progress report on what action the PSB has taken to address OPSI's recommendations.
9. If the PSB has not taken sufficient action to comply with the Regulations, OPSI may refer the matter to a Minister within the Ministry of Justice. This could result in the Minister in question writing to the head of the PSB. In exceptional circumstances, and following discussions with the appropriate Ministers, OPSI may consider it necessary to revoke in full or in part a delegation of authority for Crown bodies.

Once OPSI has published its assessment, if either party is dissatisfied because they feel OPSI has not interpreted the Regulations correctly or have not followed their own PSI complaints procedures, the party may refer the dispute to the Advisory Panel on Public Sector Information (APPSI).

3.2.1.3 Good practice: the French Commission for Access to Administrative Documents

The French Act n° 78-753 of 17 July 1978 on the access to administrative documents has created the **CADA (Commission d'Accès aux Documents Administratifs – Commission for Access to Administrative Documents)** and it was updated to integrate rules on re-use at the stage of the implementation of Directive 2003/98/EC on PSI re-use.

CADA is the French independent administrative authority responsible for ensuring access to administrative documents and re-use of public information and was created in 1978 to ensure the correct application of the right of access. It recognizes that everyone has the right to obtain documents held by public bodies in the framework of their public service tasks, regardless of their shape or form.

CADA gives opinions that constitute first-step remedy litigation to:

³ APPSI Review Board: a specially constituted board of the Advisory Panel on Public Sector Information (APPSI).

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- Any person who is denied access to an administrative document, or does not get a response within one month, can appeal to the CADA that decides on the communicability or not of the said document.
- Any person who receives a negative decision for the re-use of public information can appeal to the CADA.

CADA can also provide advice to public bodies and governments for the implementation of the right to access or the right to re-use.

CADA ensures the transparency of administrative action and gave its interpretation of the relevant texts in the matter via its opinions and advices:

- It may propose the necessary changes to the Government to improve the right to access and the right of re-use of public information,
- It may also impose penalties on people who re-use public information in violation of the conditions laid down by French law (cf. Order of 6 June 2005 that entrusted the CADA with the power of sanction with regard to the re-use of public information).

3.2.2 Independence

3.2.2.1 Good practice: The Slovenian Information Commissioner

The independence of the Slovenian Information Commissioner is guaranteed under the Information Commissioner Act (ICA).

The elements of the independence of the Commissioner are:

- Organisational independence (Art. 4, Para. 2 of the ICA): Information Commissioner establishes its organizational structure with standing orders and other general acts.
- Expert staff of the Information Commissioner (Art. 9 of the ICA): Information Commissioner has an expert and administrative-technical staff.
- Budgetary independence (Art. 5 of the ICA): Funds for Information Commissioner's operation are provided from the Budget of the Republic of Slovenia and is **determined by the National Assembly** of the Republic of Slovenia **on proposal of the Information Commissioner**.
- Appointment (Art. 6, Para. 1, 3 of the ICA): Information Commissioner is appointed by the National Assembly of the Republic of Slovenia on proposal of the President of the Republic of Slovenia. Information Commissioner is appointed for a five-year's term and can be reappointed once.

- Dismissal (Art. 7, Para. 2, 3): Information Commissioner may be subject to **early dismissal by the National Assembly of the Republic of Slovenia only if:**
 - He himself/she herself so demands,
 - If he/she no longer fulfils the conditions for execution of the function determined in the Article 6(2) of this Act,
 - If he/she becomes permanently incapable of performing his function,
 - If he/she neglects to execute his/her powers in accordance with the Law and Constitution. The procedure for the dismissal of the Information Commissioner can only be started on proposal of the President of the Republic of Slovenia.
- The power to file a request for a constitutional review to the Constitutional Court (Art. 13)
- Operational independence: the Commissioner and its staff are empowered to access all requested data (also personal data, tax secrets, secret information) etc.

3.2.3 Sufficient & consistent budget/staff

3.2.3.1 Good practice: The French CADA

The Order of 6 June 2005 defined CADA as an independent administrative authority. Its independence is guaranteed by its composition, as laid down in Article 23 of the Law of 17 July 1978.

CADA is chaired by a Councilor of State, and is composed of ten other members:

- A judge of the Supreme Court and a judge of the Court of Auditors;
- A deputy and a senator;
- A local elected official;
- A professor of higher education;
- An expert member of the CNIL (French Data Protection Authority);
- And three experts in various fields (archives; prices and competition; public dissemination of information).

To ensure the functioning of CADA its President uses “rapporteurs” whose activity is coordinated by a general rapporteur and a deputy general rapporteur. The Prime Minister also appoints a commissioner for the government. He/she can assist the CADA’s deliberations.

To accomplish its mission, CADA also relies on a secretariat whose staff (currently 13 agents) is made available by the French Prime Minister.

3.2.4 Binding decisions

3.2.4.1 Good practice: the Slovenian Information Commissioner

The decisions issued by the Information Commissioner are binding under the rules of the administrative law (General Administrative Procedure Act; GAPA).

The Information Commissioner can:

- **Refuse the appeal** in whole or partially as unfounded and confirm the public body's decision;
- **Grant the appeal** in whole or partially, overthrow the body's decision and **order the body to hand out the requested PSI** or part of it;
- Grant the appeal in whole or partially, overthrow the body's decision and **refer the matter back to the body** to issue another decision within 30 days;
- Annul the body's decision⁴.

Namely, the Commissioner has the power to issue binding and enforceable decisions (second-instance, administrative decisions). Not enforcing the Commissioner's decision constitutes a misdemeanour, which is a strong element showing how binding the Commissioner's decision is. When the decision of the Commissioner becomes final and enforceable and the PSI is not made available, the applicant can turn to the Commissioner who can initiate an inspection and/or misdemeanour procedure. The Commissioner can demand that the public sector body reports why its decision has not be enforced and it can also issue a fine.

The Commissioner's decision can be, nevertheless, disputed before the Administrative Court in 30 days after it has been issued and served.

3.2.5 Expertise

3.2.5.1 Good practice: the Belgian federal appellate body

Applicable legislation:

- Law on access to public sector information ('Openbaarheid van Bestuur' (11 April 1994)).

⁴ See Art. 246 of the GAPA.

- Federal law on the re-use of public sector information (7 March 2007) (in transposition of the PSI Directive of 2003).
- Royal Decree on the creation of a federal appellate body for the re-use of public sector information (18 July 2008).
- Royal Decree on the appointment of the members of the Commission for access to and re-use of public sector information (3 April 2013).

In Belgium, there is a federal appellate body for the re-use of public sector information. This body was created by Royal Decree, in execution of the Law of 7 March 2007 and more specifically article 9 of that Law which established the establishment of this Federal Appellate Body.

Mission

The federal appellate body for the re-use of PSI has to rule on the complaints that are filed by natural persons, when these are confronted with a rejection of their request with a governmental body to re-use PSI or when one of the provisions of the granted license to re-use the PSI is not being respected.

Membership

The Section on re-use of PSI is composed of six members. In addition to a Chairman and a Secretary there are four members appointed by the Belgian King. Two out of those four members are appointed from the government officials level A of the centralized or decentralized services of the State. The two other members out of those 4 are appointed from the staff of private companies or entities of which the corporate purpose is to represent such private companies or sectors. This specific composition is part of the requirement of independence of this Appellate Body.

This mixed composition allows the Body to avoid the risk that they would not be able to meet. Such a situation would likely occur in the case the Body would only consist of government officials because the latter could find themselves in a conflict of interests' situation in relation to article 16, paragraph 2 of the draft Decree which prohibits members of the Appellate Body to be present to a meeting of this Body when they have to discuss complaints against administrative decisions in which they have a direct involvement. The Body should only exercise their task independently and completely neutral. When examining requests for advice or redress, they cannot receive any instructions.

The members of the Appellate Body are not allowed to be present at deliberations of the Body in matters in which they are directly involved in the administrative decision for which an appeal was lodged. They are also prohibited from partaking in deliberations of the Body about objects wherein they are directly involved, either on a personal level or as agent, or concerning objects in which their kin or next to kin have a personal and direct interest in.

Half of the members of the Appellate Body must be Dutch-speaking; the other half must be French-speaking. The position of Chairman must alternately been given to a French- or Dutch-speaking member.

Appointment of the Members

The members of the Commission whose composition and procedure shall be decided upon by Royal Decree, shall be appointed by the King by a decision made by the Council of Ministers, on recommendation of the Prime Minister. The designation of each effective member goes along with the designation of a supply member.

Currently, article 1-4 from the Royal Decree of 3 April 2013 regulates the appointment of the members of the Federal Appellate Body. It is worth mentioning in this respect that one of the LAPSI partners (CRIDS, Namur, Belgium) is also part of this Federal Appellate Body.

The term of office of the members of the Federal Appellate Body is set at four years. This term is renewable.

Seat

The seat of the Body is located within the premises of the Federal public Service, Home Affairs.

Decision-making procedures

The Body for re-use of public sector information shall take its decisions by majority vote.

Motivation and disclosure

Decisions of the Federal Appellate Body are reasoned and publicly accessible. The Body that receives the appeal writes it in a register indicating the time of receipt. It is worth mentioning that up until this day only one appeal has been received by the Body on May 2013, which was rejected as the public enterprise concerned has not been considered as a PSB by the Belgian Law of 21 March 1991 on the revision of some public bodies.

There are moreover some decisions of the Federal Appellate Body for the access to environmental information that explicitly mention the re-use of PSI law of 7 March 2007.

3.2.6 Procedure for determining competence/exchanging info

3.2.6.1 Good practice: the Slovenian Information Commissioner procedure for determining competence and/or exchanging information with National Data Protection Authority and Competition Authority

The Information Commissioner is the appellate body for PSI access or re-use procedures as well as the national data protection authority. It is an independent regulatory body.

There are no specific provisions in the legislation regulating the relationship between the IC and the Slovenian Competition Protection Agency (SCPA). Nevertheless, according to administrative

procedures legislation, the relevant public sector body can always ask other public sector body for explanation and data, relevant for a specific case. In addition, public sector bodies and organizations competent for issuing administrative decisions, are obliged to offer each other legal assistance in specific administrative procedures.

If a public body receives a document it is not competent to address, it must immediately send the document to the competent body. The client must be notified about that.

The General Administrative Procedure Act (GAPA) and specific legislation (like the Information Commissioner Act, the Access to Public Information Act) provide rules regarding which authority is competent. In case of a competence dispute, the GAPA provides for a procedure for determining the competence between different authorities who claim they are competent (the so-called “positive competence dispute”) or do not want to be competent (“negative competence dispute”).

In case of re-use of PSI there is no formal procedure envisaged in the legislation. However, the DPA (which in Slovenia is the Information Commissioner) is competent to:

- Issue non-binding opinions, clarifications and positions on issues in the area of protection of personal data, and publish them on the website or in another appropriate manner;
- Prepare and issue non-binding instructions and recommendations regarding protection of personal data in individual fields.

In case when the public body wants to release data and is concerned with data protection issues, it can turn to the DPA – Information Commissioner, but is not required to do so.

3.2.6.2 Good practice: the UK OPSI

The OPSI complaints procedure does not prevent either party from having recourse to the courts, or prevent parties from referring issues to other regulatory bodies at any time, although OPSI will not actively investigate a complaint while it is the subject of a current judicial process. In other words, OPSI procedure does not interfere with a party's right to refer the matter to the courts at any time.

OPSI's recommendations may be used as evidence in any subsequent action, including action taken through the courts. OPSI may make available submissions produced by both parties and notes of any discussions within OPSI as evidence in any subsequent legal proceedings.

Furthermore, during the initial phase of the OPSI investigative procedure, if the complaint relates to issues such as Freedom of Information or competition policy, OPSI will notify the complainants whom they should contact about their complaint. OPSI has a Memorandum of Understanding with the Office of Fair Trading (OFT: www.oft.gov.uk) and concordats with the Office of the Information Commissioner (OIC: www.informationcommissioner.gov.uk) and the Office of the Scottish Information Commissioner

(OSIC: www.itspublicknowledge.info). These set out how the various bodies work together in related areas of policy.

3.2.6.3 Other practice: the French CADA

Chapter II of Article 6 of the French Act of 17 July 1978 provides that documents the disclosure of which would undermine the protection of privacy, confidentiality, commercial or industrial secrecy, are communicated only to the persons directly concerned by these documents. CADA and the administrative courts have progressively limited the factors to be taken into account when determining what constitutes privacy.

Moreover, re-use of personal data is only possible under certain restrictive conditions, laid down by Article 13 of the Act:

- On the one hand, it is necessary that the person to whom the data relates has given his/her consent or that these data are anonymised, unless a statutory or regulatory provision allows full re-use (see for instance CADA's decision No. 20074133 of 21 February 2008). The public body may refuse to anonymize the data if doing this implies a "disproportionate effort" for it (Article 40 of the Decree of 30 December 2005).
- On the other hand, the second paragraph of Article 13 of the Act reiterates that re-use of personal data must comply with the requirements of the French Data Protection law of 6 January 1978 ("the CNIL's Act").

CADA therefore refers people to the recommendations of the CNIL (e.g. about registration data) and uses its competence when issues of personal data are at stake. The same goes for the CNIL's decisions when re-use is at stake, in principle.

3.3 Transparency of redress procedure

No matter how well the redress procedure is organised, it will not reach its objectives if the potential complainants do not know how to access the means of redress or do not have sufficient information about the different steps in the complaint procedure.

Increasing the transparency of the redress procedure for the re-use of PSI can be done through the combination of a number of relatively straightforward measures. A first good practice is the **publication of guidelines for re-users** on how to file a complaint and the different steps of the process, **combined with possible assistance** in case of questions, e.g. through the availability of a **help desk**. However, the re-users also have to be guided to this information, which requires raising awareness on the existence of the redress procedure.

To allow potential complainants and to allow them to assess whether there are other parties involved in a comparable conflict or if there are precedents supporting (or rather discouraging) their complaint, a good practice is to **publish the judgements of the redress body**, and also **publish the case docket**. In this way, interested parties can see that there are complaints and how they are solved, and they can see what data exists or is asked for. Of course, this information should only be published with respect of the privacy of the individuals' involved or other interests such as trade secrets.

Good practice also includes the **monitoring of the redress process**, relating to e.g. the time within which a case was decided, what the results were, etc. Statistics based on this monitoring exercise can be very helpful for re-users to assess their position.

3.3.1 Good practice: transparency of redress procedure in Spain

There is a specific administrative procedure enshrined in Act 37/2007 on PSI re-use for applications in this field. As a rule, Act 30/1992 establishes a general duty in order to publish all administrative procedures. However practical experience shows that this obligation is seldom fulfilled in the field of PSI re-use and no clear legal consequences are provided.

Despite this inconvenience, several official guides have been published by the national Government and are accessible through the APORTA website (<http://datos.gob.es/datos/?q=node/521>). These guides only could be considered *soft law* since they are not binding and are only related to the national level. The guide on cost-free status and fees in the field of PSI re-use must be underlined as a good-practice example.

There is also an annual meeting organized by the national Government from promotion and raising awareness in this field that can be considered “a must” for the PSI re-users community in Spain.

3.3.2 Publication of cases

3.3.2.1 Good practice: publication of cases in the Flemish Region - Belgium

Applicable legislation:

- Decree on access to public sector information - ‘Openbaarheid van Bestuur’ (26 March 2004)
- Decree on the re-use of public sector information (27 April 2007)
- Decree on the creation of an appellate body for the re-use of public sector information (19 July 2007)

The Flemish appellate body publishes all of its cases on its website regarding access to public sector information. All cases are available online while the personal data in these files are omitted.

There are two registers that guide the public through these decisions: a chronological register as well as a register that groups the decisions under the relevant articles of the Decree on access to public sector information.

The decisions published, which are only on access to public sector information as there have not been any re-use appeals yet, are relatively up to date. On 16 January of 2014, the last accessible decision of the Flemish appellate body dated back to a request of 16 December 2013.

According to article 21 of the Royal Decree of 2007, a yearly report is published about the appeals that were lodged conform this Decree. This report will be organized together with the yearly report on the appeals on the application of access to public sector information, in conformity with article 27 of the Decree of 26 March 2004 on access to public sector information.

3.3.2.2 Good practice: publication of cases in France

The French CADA provides a database on its website containing its recent opinions on http://www.cada.fr/spip.php?page=recherche_avis.

Its database provides a selection of approximately 4.000 opinions and advices issued by CADA in the past five years (on the 70.000 at its disposal in electronic format, for a total of 95.000 opinions). To compare, there are about 5.000 demands of individuals per year plus innumerable requests of advice from public bodies.

CADA has made a selection in this database in order to:

- Avoid disseminating information that no longer corresponds to the law (i.e. major changes in legal texts) or its position (evolving “jurisprudence”);
- Improve search results by retaining only the lightest and “pedagogic” ones ;
- Avoid large and disproportionnate work for anonymisation reasons for instance.

Are also distinguished in the database:

- The opinions, far more numerous, made at the request of a person/individual who has obtained a refusal to have access to an administrative document or to re-use of public information,
- The advices, which correspond to the answers that CADA brings when it is consulted by administrative authorities/bodies about what answer they can give to certain requests of the public.

The database is regularly updated and covers various subjects that come to the knowledge of the CADA. To facilitate the search it is possible to circumscribe the pre-defined themes or keywords to refine the results.

Moreover, CADA has to provide an annual activities report that shall include some analysis of its main opinions and advices issued in the past year and a summary analysis of its activities. In addition, the report includes a selection of some of the main problems encountered by CADA in its role of interpreting texts, which can lead it to proposals for legislative changes to the government, for instance.

3.3.2.3 Good practice: publication of cases in Slovenia

In Slovenia, State and local government bodies are obliged to draw up an annual report on the implementation of Access to Public Information Act (APIA).

The annual reports must include:

- The number of filed, approved and denied requests for access/re-use of PSI,
- The number of filed complaints and issued decisions on these complaints with the description of the decision and list of reasons for denial of request,
- The number of disputes before the Administrative Court against the final decision in the appellate procedure and in case of administrative silence of the appellate body (Information Commissioner);
- And the number and list of received Administrative Court Decisions, with which the applicant's lawsuit was accepted, including the reasons for such Court Decision.

Upon issuing a decision, the Information Commissioner anonymizes it and publishes it on its website. It also adds a short description of the case. The decisions are published in a case docket (see hereunder: publication of case dockets) and are searchable by content, year of issuing, and topic (e.g. personal data, trade secret, copyright work, etc.).

Information Commissioner also publishes judgments of the Administrative and the Supreme courts regarding the Information Commissioner decisions.

3.3.2.4 Other practice: publication of cases in the Netherlands

There is no legal obligation for public sector bodies in the Netherlands to publish decisions on request for access, but some have a practice of doing so online. If the decision is positive, they also publish the requested information at the same time.

The administrative courts publish freedom of information/re-use cases, but there is a selection mechanism in lower courts (they leave out the 'uninteresting' cases). Highest administrative courts publish every decision online on their own website and through the national case-law website: www.rechtspraak.nl.

3.3.3 Publication of case docket

3.3.3.1 Good practice: publication of case docket in Slovenia

On its own initiative, the Information Commissioner publishes the so-called case docket – a list of cases that are currently being handled by the Commissioner.

When the Commissioner receives the applicant's complaint from the first instance body (the complaint is first filed with the first instance body – the data holder), the secretarial staff of the Commissioner takes care of all the administrative tasks regarding the receipt of the complaint (recording the complaint in an electronic filing system).

When the complaint is recorded in the system, the technically skilled employee enters the following information onto the Commissioner's website: the date of receiving of the complaint, the case number, the names of parties (if the applicant is a natural person then only "Applicant" is written).

When the case - the complaint - is solved, the case number is removed from the docket and moved to the "solved" cases part of the website and the docket is cleared of the solved case. In the "solved cases" part of the website, the final decisions are later published in an anonymised form.

3.3.4 Promotion, raising awareness

3.3.4.1 Good practice: complaints procedure published on website in UK

What is it?

The Office of Public Sector Information (OPSI), part of The National Archives, is responsible for complaints under the PSI Regulations. Those regulations require (Regulation 19) that OPSI shall publish procedures for considering referred complaints, and shall consider referred complaints in accordance with those published procedures.

The procedures are published online on The National Archives website at: <http://www.nationalarchives.gov.uk/documents/information-management/psi-complaints-procedure.pdf>.

What advantages does it guarantee?

Published procedures give clarity to both complainants and PSBs as to the process and procedures, including timescales, that OPSI will follow in investigating referred complaints.

Having published procedures provides staff of OPSI with guidance and advice as to how they should proceed when investigating a complaint.

How does it work?

Once published, the complaints procedures are reviewed occasionally in the light of experience and relevant best practice recommendations.

The published procedures are freely available for all to access, and their re-use is enabled under the terms of the Open Government Licence.

What are the main features of this process?

Clear published guidance, freely available, provides transparency to all involved in the complaints procedure.

How do the complaints procedures relate to other disputes' procedures?

The published procedures adhere to current best practice advice and guidance. They are similar to the procedures published relating to complaints referred under the Information Fair Trader Scheme.

3.3.4.2 Good practice: promotion & raising awareness in Slovenia

According to the relevant legislation, the Ministry competent for public administration (Ministry of Interior) shall perform promotional and developmental tasks in relation to access and re-use to public information, including informing the public about the means and conditions for the access to public information, providing counselling to other bodies in relation to the application of the provisions of Access to Public Information Act, and other promotional and developmental tasks.

As the Information Commissioner is the appellate body, it cannot advise public sector bodies or applicants on concrete matters. Nevertheless, the Information Commissioner regularly offers general advice on the implementation of rights under APIA for both citizens and public sector bodies via phone, e-mail and official mail. On top of that, the Commissioner also publishes all its decisions on access to PSI and PSI re-use online, and can instruct citizens or public bodies to view the relevant decisions.

The Information Commissioner also regularly organizes access to PSI/ PSI re-use workshops and seminars for various types of public bodies (e.g. municipalities) and also for citizens upon their requests and issues publications, such as guidelines on these topics on its website. Every year on the "International Right to Know" Day (28 September) the Commissioner also organizes a conference or a workshop on various aspect of access to PSI or PSI re-use. The Commissioner's staff also regularly actively attends various events (workshops, seminars and conferences) on these topics.

Also the Ministry of Interior organizes at least one conference per year on the topics of access to PSI and PSI re-use – usually around the international right to know day.

3.4 Swiftness of the procedure

For any business model based on PSI to succeed, **it is essential that the potential re-users can quickly react to opportunities in the market.** Therefore, **any redress procedure has to be swift and has to be handled within a minimal timeframe.** This timeframe should be fixed, with set deadlines for acknowledgement of receipt of the complaint, of the decision and of the execution.

Of course, different cases may require a different treatment and duration of the procedure. For simple questions, a quick answer should be possible, while a full case might last a couple of months. Whatever timing is maintained, it should allow for a business model to be developed.

3.4.1 Good practice: Swiftness of redress procedure in Belgium: time limits for decision

In Belgium, appeal on a negative or unsatisfactory decision from the PSB is possible in all the different entities. For each of the three entities, there is an appellate body on PSI in charge to hear appeals against a decision of the administrative authority for the provision of public documents or the refusal to execute a decision. The Flemish side is very clear on which can concern the appeal. The applicant may appeal against: a negative decision based on the very definition of the administrative documents, a decision fixing the amount of fees, a decision setting the conditions of the license, and the non-compliance with deadlines.

Both Walloon Region and Federal State provide that an appeal can be introduced in writing within 60 days after the “fact that generates the appeal”, which strengthens legal certainty for the applicant.

Under the Flemish Decree⁵, upon receiving the appeal, the appellate body must register this appeal and notify the relevant body, which did not respond within the term. The appellate body then has 30 calendar days to respond to the appeal. Should the appellate body recognize that the reasons for delay were justified; i.e. that the requested information is hard to collect, it will notify the applicant that the deadline for the appellate body to decide on the applicant’s appeal will be prolonged from 30 calendar days until 45 calendar days. The decision to prolong the deadline must stipulate the reasons for the delay. By providing for an extension of the time limits in case of complex case, the Flemish version seems more realistic than the others.

In case the appellate body decides to accept the applicant’s request, the deadline for the public body to give the requested information will be prolonged from 30 days until 40 days. In case the appellate body took a decision to prolong the deadline to decide on the appellant’s request, the deadline for giving the requested information will be prolonged from 45 until 55 calendar days.

Following Article 16 of the Federal Law, the public body concerned by the complaint shall enforce the decision of the Federal Commission within 15 days.

⁵ Article 17 of the Flemish Decree.

The appellate body being an Administrative Authority, its decision in turn may be subject to an action for annulment before the Council of State⁶. The time limits for initiating the procedure is 60 days after the decision have been published or notified.

3.4.2 Good practice: swiftness of the procedure in Spain

Spanish Act 37/2007 on PSI re-use has established a twenty days maximum time limit for decisions. This deadline is clearly shorter than the generally applicable one for administrative procedures. Anyway it may be enlarged for twenty more days attending to the complexity or volume of the information request.

As a major inconvenience, administrative silence in this field is considered a negative decision, which could be seen as a denial for re-use purposes.

3.5 Attention for the practical organisation of the procedure

The **practical aspects of the redress procedure** also deserve attention. They **may also play an important role in discouraging re-users** from filing a complaint against a public sector information holder. Good practices would include the **possibility for complaints to be filed electronically** and possibly **via a standard form** provided on the website of the redress body.

Linked to what was mentioned earlier in the paragraphs relating to transparency, **assistance with the procedural aspects of the complaints** is also an important good practice. This **could be done by a 'helpdesk' or 'ombudsman'**, which could also play a role in establishing or maintaining a constructive relationship between the re-user and the public sector information holder.

The procedure should not require (but allow) that all the parties are represented by a lawyer. With regards to costs and fees, in an optimal situation **different types of costs should be distinguished**. **A request to access and re-use should be free, the delivery of the requested information should be free or at a low-cost**. The court procedure that follows when access is refused or not granted on terms that are acceptable to the re-user however should be at low-cost but not per se free. Otherwise the burden of procedure falls on all tax payers in general and this could invite "frivolous claims" which could be very costly to handle. Therefore, optimally, there should be a **distinction between the initial request and the administrative review stage**.

⁶ Arrêté du Régent du 23 août 1948 déterminant la procédure devant la section du contentieux administratif du Conseil d'État.

3.5.1 Good practice: electronic complaints submission procedure in UK

What is it?

Where a complainant has decided that the way a Public Sector Body (PSB) has dealt with a complaint under the PSI Regulations is not satisfactory, and they wish to refer the complaint to the OPSI, they do this electronically. There is no set form to fill out or format for the complaint – the complainant simply submits a referral by email to the OPSI team, in a maximum of 2,000 words, identifying which regulation they believe the PSB has not met.

Once OPSI has received a submission, and has decided that it is within scope of the PSI Regulations, then the submission is passed to the PSB, which is asked to respond by e-mail, again in a maximum of 2,000 words.

What advantages does it guarantee?

Using a simple e-mail or attached word document to submit a referral keeps the process simple. The word limit stops complainants getting bogged down in the complexity of the case or introducing too many issues of detail. The submissions are focused on the main points of their complaint. Similarly for the PSB, the word limit forces them to focus on the main points of the complaint.

This reduces costs and time for the complainant and the PSB.

For OPSI, ensuring that the submissions are short and focused enables a quicker review of the issues and the complaint to be investigated and a report written more quickly.

What are the main features of this process?

No charge.

Simple procedure.

As both parties know that their submissions will be shared with the other side in the dispute, this encourages an honest and open approach to the submissions.

3.5.2 Good practice: practical organisation of the redress procedure in the Italian Region of Piemonte

Piedmont implemented a **set of provisions and guidelines** on access and re-use of PSI held by Regione Piemonte: respectively, Regional Law n. 24, December 23rd 2011, *Provisions Relating to the Publication through the Internet and Re-Use of Documents and Public Data of the Regional Administration*, which grants both the access and re-use of data held by the Region (hereinafter, the Provisions) and Resolution n. 22-4687 of the Regional Junta, October 8th 2012, *Guidelines for the Re-Use and Dissemination through the Internet of Documents and Public Data of the Regional Administration* (hereinafter, the Guidelines).

Requests to obtain access and re-use of documents and data other than those already available on the regional Open Data Platform must be sent by **PEC (Certified Electronic Mail)** to the URP (Office for Relations with the Public) of Regione Piemonte (the data owner, according to art. 5, Legislative Decree n. 36, January 24th 2006, implementing the PSI Directive). Art. 8 of the Guidelines defines such procedure.

Within 3 working days, the URP forwards the request to the competent Regional Directorate which owns the pertaining data. The Directorate shall notify the applicant, via PEC, of the start of the proceeding.

The Directorate shall accept or reject the request within thirty days (which may be extended by a further thirty days in case of many or complex requests). According to art. 8 of the Guidelines, the competent Regional Directorate is not allowed to remain silent on the request: it is bound to decide whether accepting and publishing the data or refusing and notifying the grounds for refusal to the applicant [interestingly, the draft version of the Guidelines equalized silence to refusal, instead].

In the event of acceptance, the Directorate shall make data and documents available on the regional Open Data platform and contextually communicate the publication to the URP. In the event of non-acceptance, the Directorate shall notify the grounds for the refusal by PEC and communicate them to the URP and the Directorate of Innovation, Research and University.

Complaints against a negative decision must be sent by PEC at the address indicated on the site of the Piedmont Region in the section dedicated to the URP. Art. 9 of the Guidelines defines such procedure.

Within 3 working days, the URP forwards the complaint to the Regional Directorate that manages data and documents pertaining to the request for re-use which is referred in the complaint. The URP forwards the complaint to the Directorate of Innovation, Research and University as well.

The Directorate shall notify the applicant, via PEC, of the start of the proceeding. The Directorate verifies the grounds of the complaint within thirty days: in case of acceptance the Directorate shall publish the data and contextually communicate the decision to the URP; in case of non-acceptance the Directorate shall notify the refusal to the URP and the Directorate of Innovation, Research and University.

According to art. 10 of the Guidelines, the procedure is free of charge; specific charges may be applied only when the technical costs related to the collection, production, reproduction and dissemination of the requested data are particularly burdensome for the Region [a further Resolution of the Regional Junta must still define the amount of such charges].

3.5.3 Good practice: practicalities of the procedure of PSI redress mechanism in Norway

Free of charge

In Norway, in principle all information is to be accessed free of charge and there is no fee for a Freedom of Information request or complaint.

However there are exceptions to this rule. Payment for transcripts, printouts or copies is permitted as long as the total income does not exceed the actual costs of copying and dispatching documents.

Some entities have an exception to this where they may be self-financing or have commercial activities. These organisations include but are not limited the Norwegian Property Information company, the Ordnance survey, the patent office and the Polar Institute.

Electronic Complaints

A Freedom of Information request or complaint can be made orally or in writing. E-mail is perfectly acceptable and one of the prescribed forms of communication.

Anonymous

All requests and complaints can be submitted anonymously. There is no requirement that people identify themselves, e.g. a person can send a request via e-mail or telefax without having to give their name.

Possibility to sue if decision not in time

When the public body does not respond to the applicant's request in due time within 5 working days, this shall be regarded as a refusal which may be appealed.

Time limits for decision

A request must be dealt with as soon as is practically possible and preferably within one day. Normal requests should not take longer than 3 days. In larger cases more time may be necessary, this is acceptable, however the decision on whether to grant access must still be made within the 3 days.

The Formalities

When the public body refuses the applicant's request in whole or in part, the applicant must file the appeal with the body. There is a deadline of 3 weeks from the time of refusal for access to which a complaint must be made. The body has the opportunity to change its decision and grant access. If this is the case, then there is no need to bring in the appellate body. The body is not obliged to consult any other entities whose interest might be affected, but must make a sole decision on the matter.

If the decision remains unchanged the appeal goes further. The appellate body in most cases is the administrative agency that is immediately superior to the Administrative Agency that has made the

decision, i.e. Ministry in the case of Executive Agencies or County Governor in the case of Municipalities. The applicant can, after the second denial or amended decision, send the complaint to the ombudsman, or demand it processed by the State Council.

The Parliamentary Ombudsman can be brought in at any stage, however they will normally not take the case until all other avenues are exhausted with the appellate bodies. The deadline is 1 year after the decision has been refused to send in an appeal.

The Ombudsman assesses whether grounds exist for raising the matter with the public administration agency to which the complaint applies. This assessment normally takes between four and ten weeks. If grounds do exist for further investigations they then write to the public administration agency requesting their comments to the complaint. They will often put specific questions to the agency. As a general rule, the agency will be given four weeks within which to respond. When they have received this response the appellant has the opportunity to give comments.

The actual procedure and timing is as follows:

As soon as it comes in, the complaint will be passed on to an executive officer who will review it and assess whether it falls within the mandate of the Ombudsman. Within 2 weeks one of the following options are executed:

- The complaint is rejected. The complainant is notified by letter, or
- The Parliamentary Ombudsman requisitions documents from the administration. The complainant receives a provisional answer, or
- The complaint is investigated solely on the basis of the submitted documents and the investigation is completed during a short space of time. The complainant receives notification by letter. Complaints about slow procedure are often handled in this way.

The review can continue up to 10 weeks, then:

- The Ombudsman finds grounds for investigating the case in further detail and sends a letter to the administration. The complainant is notified by letter, or
- The Ombudsman does not find grounds for conducting further investigations into the matter and the case is closed. The complainant is notified by letter.
- Then for 3-6 months:

Investigations into the case continue. The complainant has the opportunity to give his or her comments.

- Then for 4-12 months:

The Parliamentary Ombudsman gives his opinion in the case. If the opinion finds in favour of the complainant and the case results in censure of the administration, the administration will normally comply with the findings of the Ombudsman.

3.5.4 Good practice: Costs and formalities in the Netherlands

Fees are modest for administrative procedures and each party bears their own costs (contrary to civil procedures). Representation by a lawyer is not necessary (but certainly advisable beyond the appeal stage).

In the Netherlands, there is a clear distinction between the initial request and the administrative appeal procedure. The request for access/re-use and the review of decision when refused is free, but the subsequent administrative appeal before the courts is not.

A request for access and re-use can be made in any form: email, letter, web form in some cases, by telephone. This makes the procedure less cumbersome for re-users than, for example, in Piedmont, where there is only a Certified Email option.

3.5.5 Other practice: attention for the practical organisation of the procedure in Spain

In the General Administration (Central State) complaints can be filed electronically. This possibility is free of charge. It is also free to file the complaint in a traditional way.

No specialized assistance for re-users with the procedural aspects is provided. The legal services or legal expertise in the General Administration are only to advise public bodies, never citizens.